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Question of the Falkland Islands (Malvinas)

Letter dated 22 February 2012 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General

In accordance with instructions received from the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to refer to the letter dated 10 February 2012 from the Chargé d'affaires a.i. of the Permanent Mission of Argentina to the United Nations addressed to you (A/66/696-S/2012/86), transmitting in annex a presentation delivered by the Minister for Foreign Affairs of the Republic of Argentina that accuses the United Kingdom of "militarization" of the South Atlantic.

The United Kingdom unequivocally rejects these unfounded assertions. The United Kingdom had a minimal military presence in the South Atlantic prior to the Republic of Argentina's illegal invasion of the Falkland Islands in 1982. The Republic of Argentina did not abide by the Security Council resolutions in 1982 calling on it to withdraw its forces peacefully, and it had to be forcibly removed. The United Kingdom military presence increased after 1982 owing to the direct and continued threat posed to the Islands and its people by the Republic of Argentina. Since then, the United Kingdom has maintained a presence designed solely to reassure and protect the Falkland Islanders' rights to determine their own political, economic and cultural futures.

The United Kingdom does not have a network of military bases across the South Atlantic. The United Kingdom has no military bases in the islands of Saint Helena, Tristan da Cunha or South Georgia and the South Sandwich Islands. In contrast to the Republic of Argentina, the United Kingdom maintains no military bases in Antarctica. British Antarctic bases are strictly for civilian and scientific purposes. With the United Kingdom's permission, the United States of America first built a military airfield on Ascension Island during the Second World War and still maintains it today. The United Kingdom hardly used the military airfield on Ascension until the Republic of Argentina illegally invaded the Falkland Islands in 1982. It is now used as a staging post for air movements between the United Kingdom and the Falkland Islands.

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The United Kingdom rejects the baseless assertion that it seeks to control maritime and air traffic across the South Atlantic. The United Kingdom fully respects the right of all vessels to innocent passage through territorial waters and freedom of navigation in waters beyond, in full compliance with international law, including the United Nations Convention on the Law of the Sea. The United Kingdom does not seek to impose any restrictions on civilian aircraft transiting its airspace, in full compliance with international law. In contrast, the Republic of Argentina has attempted to restrict maritime traffic in the South Atlantic under Argentine Presidential Decree 256, has banned some flagged vessels from its ports, and has since 2003 banned charter aircraft travelling to/from the Falkland Islands when transiting Argentine airspace.

The Republic of Argentina's suggestion that the United Kingdom is seeking to threaten militarily either the Republic of Argentina or the wider region is entirely without foundation. The Government of the Republic of Argentina has suggested that it has evidence of a deployment of a Vanguard-class submarine into the South Atlantic. As the Republic of Argentina knows, it is the United Kingdom's long-established policy never to comment on submarine operations. With regard to nuclear weapons, however, the United Kingdom's position is clear. The United Kingdom ratified the Protocols to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (the Treaty of Tlatelolco) in 1969, and it fully respects these obligations. The United Kingdom position on its nuclear deterrent is unambiguous: the United Kingdom will not use — or threaten to use — nuclear weapons against non-nuclear-weapon States parties to, and in compliance with, the Treaty on the Non-Proliferation of Nuclear Weapons.

The United Kingdom undertakes routine military exercises of short-range anti-aircraft missiles approximately every six months on the Islands. It has done so since they were deployed there in response to the Republic of Argentina's invasion of the Falkland Islands in 1982. The Republic of Argentina has been aware of these exercises for many years. The Republic of Argentina decided only in 2010 that it wished to protest to the International Maritime Organization (IMO) about these exercises. The United Kingdom wrote to the IMO Secretary-General in January 2011 outlining its position, its notification procedure and its exemplary safety record, and reiterated that safety of life at sea had not been put at risk by these exercises. Despite the Republic of Argentina's attempts to portray these missiles as posing a threat to Argentina and others, they are entirely defensive in nature: they are surface-to-air missiles with an approximate range of 6,800 metres.

Since the liberation of the Falkland Islands in 1982, the United Kingdom has never attacked or threatened the Republic of Argentina or any country in the region. Nor does it have any intention to do so. On the contrary, the United Kingdom values greatly its strong relationships with regional partners based on mutual understandings, including through peaceful military visits and joint exercises. The United Kingdom's military presence in the Falkland Islands equates to approximately 0.5 per cent of the United Kingdom's overall annual defence budget. This has not changed and is a small price to pay when compared with the importance the United Kingdom attaches to upholding, respecting and defending one of the key principles of the Charter of the United Nations and international law.

The United Kingdom has the inherent right to defend itself in accordance with Article 51 of the United Nations Charter. The United Kingdom has regularly rotated

military aircraft and naval vessels into the Falkland Islands for the last 30 years. As part of the United Kingdom's defence posture, specific assets are routinely and regularly replaced and updated. There is nothing unusual or exceptional in this. The United Kingdom has never violated the Republic of Argentina's airspace with its Typhoon aircraft, as the Republic of Argentina now alleges. The June 2010 incident, referred to by the Republic of Argentina, was caused by a rapid deterioration in weather which meant it was unsafe for the Typhoons to land in the Falkland Islands. The United Kingdom contacted the relevant authorities and gained the necessary overflight permissions from Argentina and Chile to land the aircraft in Chile. We remain very grateful to both the Argentine Air Force and the Chilean Air Force for their rapid response, which ensured that this emergency was resolved swiftly with no risk to life.

The effective cooperation and coordination shown by the Typhoon emergency is a genuine example of the relationship that the United Kingdom would like to have on a permanent basis with the Republic of Argentina. The United Kingdom used to communicate regularly with the Republic of Argentina on South Atlantic issues under the confidence-building measures set out in various Joint Statements of 1990-1994. Since Néstor Kirchner and, later, Cristina Fernández de Kirchner took office, the Republic of Argentina has withdrawn from the last remnants of those discussions, including programmes of bilateral military contacts in 2008. If the Republic of Argentina had accepted one of the United Kingdom's repeated offers to resume these discussions on confidence-building measures and issues of mutual interest, then perhaps its assessment of the United Kingdom's military assets and posture in the South Atlantic might have been more accurate. The last offer of discussions the United Kingdom made was in 2010. The Republic of Argentina did not respond. The United Kingdom's defence and military posture has not changed; it is disappointing that the political and diplomatic posture of the Republic of Argentina appears to have.

The United Kingdom continues to believe that there are many opportunities for cooperation in the South Atlantic. However, in recent years the Republic of Argentina has:

- Withdrawn from cooperation on the South Atlantic Fisheries Commission and extended its fishing seasons in Argentine waters, thus endangering the long-term sustainable management of straddling fish stocks in the South Atlantic, in contravention of article 63 of the United Nations Convention on the Law of the Sea;
- Repudiated the 1995 Joint Declaration on Hydrocarbons, which had provided for cooperation in a Special Cooperation Area that straddled both Argentine and Falkland Islands waters;
- Placed a ban on charter flights travelling through Argentine airspace to the Islands in 2003;
- Introduced domestic legislation to penalize companies that wish to do business in or with the Falkland Islands;
- Introduced a Presidential Decree in 2010 that does not comply with the freedom of navigation nor right of innocent passage provided for by international law, including the United Nations Convention on the Law of the Sea;

- Threatened, at the United Nations in September 2011, to withdraw from the 1999 United Kingdom-Republic of Argentina Joint Statement; this 1999 Joint Statement had allowed Argentine passport holders to enter the Falkland Islands for the first time since the 1982 conflict and had provided for the resumption of the Falkland Islands' only commercial air link with South America;
- Asked the MERCOSUR region, in December 2011, to support a declaration denying access to their ports to Falkland Islands flagged vessels, thus explicitly attempting to restrict trade and threatening the people of the Falkland Islands with economic isolation.

These disturbing developments call into question the commitment of the Republic of Argentina to peaceful cooperation in the South Atlantic and its adherence to binding international law. The Republic of Argentina's unfounded accusations of "militarization" of the South Atlantic are unwarranted and baseless. It calls into question the evidential threshold applied by the Republic of Argentina to all its political claims. The reality of our military footprint in the South Atlantic is clear: the United Kingdom's military posture in the Falkland Islands is defensive and exists only in order to protect the rights and freedoms of the people of the Falkland Islands to determine their own political, cultural and economic futures. In contrast to the position of the Republic of Argentina, the position of the United Kingdom and Falkland Islands Government is firmly based in international law, and in particular on the principle and right of self-determination for all peoples, which constitutes one of the legal foundations of the United Nations.

The Government of the United Kingdom has no doubt about the sovereignty of the United Kingdom over the Falkland Islands or South Georgia and the South Sandwich Islands and their surrounding maritime areas. The principle of self-determination, enshrined in the Charter of the United Nations, underlies our position on the sovereignty of the Falkland Islands. There can and will be no negotiation on the sovereignty of the Falkland Islands unless and until such time as the Falkland Islanders so wish. There is no doubt that the Falkland Islanders wish to remain British and do not want the United Kingdom Government to enter into any negotiations with Argentina about their status.

The Republic of Argentina has enshrined within its own Constitution that the only acceptable future is full Argentine sovereignty over the Falkland Islands. The Republic of Argentina does not seek genuine dialogue, but simply wishes to discuss the terms for a transfer of sovereignty. But neither the United Kingdom nor the Republic of Argentina can negotiate away the principle and right of self-determination for the Falkland Islands people. We should like to remind the Republic of Argentina of their international legal obligations to respect the principle and right of self-determination for all peoples, as respectively set out under the United Nations Charter (Article 1.2), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (common article 1).

I should be grateful if you would have the text of the present letter circulated as a document of the General Assembly, under agenda item 45.

(*Signed*) Mark **Lyall Grant**

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Social development, including questions relating to the world social situation and to youth, ageing, disabled persons and the family

Follow-up to the outcome of the Millennium Summit

Revitalization of the work of the General Assembly

Review of the efficiency of the administrative and financial functioning of the United Nations

Summary report of the 2011 parliamentary hearing

Note by the President of the General Assembly

The present document contains the summary of the 2011 parliamentary hearing held in New York on 28 and 29 November 2011, which is circulated pursuant to General Assembly resolution 65/123 (see annex).

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Annex

Strengthening political accountability for a more peaceful and prosperous world

Parliamentary hearing at the United Nations: summary and main conclusions

1. The 2011 parliamentary hearing was held at United Nations Headquarters on 28 and 29 November 2011. It was attended by over 180 parliamentarians and their professional staff from some 50 countries, as well as representatives of several regional parliamentary assemblies.

Opening remarks

2. The parliamentary hearing was addressed by the President of the General Assembly, Nassir Abdulaziz Al-Nasser, the Deputy Secretary-General of the United Nations, Asha-Rose Migiro, and the Vice-President of the Inter-Parliamentary Union (IPU), A. Alonso Díaz-Caneja. Mr. Al-Nasser underscored the role of IPU in ensuring that parliaments provided direct input into the work of the United Nations and in helping to translate global commitments into national legislation and policies. He encouraged delegates to familiarize themselves with the decisions of the General Assembly and to help implement them at the national level. Ms. Migiro emphasized the need for parliamentarians to be accountable to their constituents by, inter alia, ensuring that people's voices were heard and by respecting the rules of democratic institutions. A former parliamentarian herself, she argued that it was parliamentarians who must be the frontline defenders of democratic governance and constitutionality. Mr. Díaz-Caneja reminded the delegates that consultations with Member States would soon begin to pave the way for a forthcoming debate in the General Assembly on how to further strengthen interaction between the United Nations, national parliaments and IPU. The outcome of those debates should boost the efforts of parliaments to ensure that national Governments were accountable to both citizens at home and the international community at large.[a]

3. The discussion was structured around four topics of particular relevance to the current global context, in which political accountability played a key role:

(a) The role of the General Assembly in strengthening global accountability;

(b) Youth participation in the democratic process: challenges and opportunities;

(c) Accountability in the management of public funds: good practices and model legislation for budget transparency;

(d) Strengthening the links between national institutions and civil society: towards more open societies.

[a] The full texts of the opening statements, along with the list of participants and related documentation, can be found on the IPU website at www.ipu.org/Splz-e/unga11.htm.

Session I. The role of the General Assembly in strengthening global accountability

Panellists: Mélégué Traoré, former Speaker of the National Assembly of Burkina Faso and Acting President of the IPU Committee on United Nations Affairs; Oscar Fernández-Taranco, Assistant Secretary-General for Political Affairs, United Nations; Camillo Gonsalves, Permanent Representative of Saint Vincent and the Grenadines to the United Nations and outgoing co-Chair of the Ad Hoc Working Group on the Revitalization of the General Assembly; Cora Weiss, President, the Hague Appeal for Peace; and Barbara Crossette, former foreign correspondent and Bureau Chief, *The New York Times*, who acted as moderator.

4. Mr. Traoré brought to bear the point of view of the IPU Committee on United Nations Affairs while Mr. Fernández-Taranco offered a perspective from within the United Nations Secretariat, referring in particular to the recent adoption of a General Assembly resolution on mediation. Ambassador Gonsalves provided some food for thought on the accountability of the General Assembly and Ms. Weiss examined the issue from the civil society standpoint. Their presentations and the subsequent discussion are summarized below.

5. Over the years, many Member States had expressed regret that the General Assembly seemed to be "losing ground" to the Security Council and criticized the latter's "encroachment". It had therefore been very heartening to see that in recent years the Assembly had acquired newfound relevance with an impressive record of ground-breaking achievements, reaffirming its position as the world's premier standard-setting body. Examples were the seminal World Summit Outcome in 2005 and the endorsement by the Assembly of the responsibility to protect, and the United Nations Global Counter-Terrorism Strategy of 2006. More recently, the Assembly succeeded where the Security Council had failed just a few weeks earlier, namely in condemning the brutal crackdown in the Syrian Arab Republic. The latest example of the Assembly's newfound relevance on peace and security issues was its adoption of resolution 65/283 entitled "Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution", which would be discussed later in the meeting.

6. In spite of those improvements, the complexities of the issues addressed by the General Assembly prevented it from being as effective as it was designed to be, and there was only limited accountability for its failure to find adequate solutions to problems that could only be solved at a global level. Its responses to three of the more critical issues facing the international community in recent times — climate change, the economic crisis and the Arab Spring — had been deficient or were non-existent. The climate change debate had morphed into an endless series of meetings at exotic venues, where process trumped substance and even the most watered-down agreements remained unimplemented. The United Nations had held a major conference on the economic crisis in 2009, but the prescriptions contained in its consensus outcome document were promptly ignored. Other than the one on the Syrian Arab Republic, the Assembly had adopted no meaningful resolution on any aspect of the Arab Spring.

7. A major challenge to the effectiveness of the General Assembly, and therefore to its accountability to its global community as the only global forum for decision-

making, was that Member States could seek alternative platforms for finding solutions, which might not entail a truly global approach. For small States, the Assembly remained the primary, and sometimes the only, forum for multilateral engagement, one where they are guaranteed a seat at the table. On the other hand, if larger countries were dissatisfied with the General Assembly as a forum, they could afford to take their concerns elsewhere: to the Group of Twenty, the Security Council or the North Atlantic Treaty Organization. They could deal with climate change issues unilaterally or in non-representative groups, as had occurred in Copenhagen in 2009. Part of the problem lay in the fact that in the General Assembly, where each country, whatever its size, had one vote, the developed countries were disadvantaged and outnumbered, and therefore had turned to other, more limited, forums where they maintained their influence.

8. The General Assembly had tried to address its weaknesses, inter alia, by creating the Ad Hoc Working Group on the Revitalization of the General Assembly. However, progress in the Working Group had been hindered by a fundamental disagreement on the nature of the problem. The developed countries saw the issue as a procedural one, to be resolved by measures such as starting meetings on time and distributing documents electronically, while the developing countries saw it as a political process whose principal objective must be to strengthen the role of the Assembly as the main deliberative body at the United Nations, resisting the encroachment of the Security Council or other bodies. Efforts to enhance the accountability of the General Assembly must therefore be accompanied by a clearer delineation of the respective roles and responsibilities of the Assembly and other bodies, and of who was accountable to whom.

9. The gulf that separated the undertaking of international commitments and their implementation at the national level was one of the main difficulties facing the General Assembly, and thus the United Nations as a whole. A major shortcoming in the effectiveness of the Assembly, and consequently its accountability to the whole body it represented, was that it had no means of obliging individual Governments that had voted in favour of a resolution to actually implement it, and no way of imposing a timetable for an adopted resolution to be turned into reality. Bridging that gulf was a matter of political will and national buy-in. International commitments were by definition binding on Governments, but they really only took hold when all stakeholders felt involved and were able to play their role. For that to happen, stakeholders needed to understand the various implications of the commitments undertaken and the measures needed to help Governments honour the pledges they had made.

> Every parliamentarian present here has experiences and innovations to share. Importantly, you also have at your fingertips the practical tools to realize our common goals. Each of you, therefore, has a responsibility and critical role to play in building global prosperity.
>
> Abdulaziz Al-Nasser
> President of the General Assembly

10. Thus, the General Assembly was at a crossroads. It had the legitimacy of universal membership and a mandate under the Charter of the United Nations that encompassed a wide variety of subject areas. But that legitimacy was being undercut by the increasingly inefficient manner in which the Assembly operated, by the encroachment of other bodies on its functions and by the fact that many resolutions, even those adopted by consensus, remained unimplemented.

11. In comparison with national legislatures, political accountability in the General Assembly was fragmented and indirect. Membership of the Assembly was not the result of direct elections, and delegates were answerable to the capitals of 193 different countries. That did not make the Assembly unaccountable, but neither did it absolve parliaments of their role in ensuring its accountability; on the contrary, there was much that parliamentarians could do. Through their policymaking and oversight roles and their power of the purse, they could exercise significant influence over the positions and actions of their Governments at the United Nations and ensure the adoption of appropriate mechanisms to effectively implement United Nations resolutions and treaties at the national level.

12. The role of national parliaments was crucial in raising the profile of international issues domestically, as well as in ensuring that the international commitments their Governments undertook reflected the national debates and interests and were subsequently implemented. To do that, it was important that parliaments should have a committee dealing with United Nations affairs, which must remain abreast of what the country's envoys to the United Nations were doing. If necessary, those representatives should be called to report to the committee.

13. Parliamentarians must also take a much more active interest both in the revitalization of the General Assembly and the reform of the Security Council, efforts intended to make both bodies more transparent with a more responsive and activist agenda. Those issues should be discussed at the parliamentary level and the outcome should feed into the United Nations process in a more meaningful manner. Very often, the deliberations at the United Nations were a matter of balancing the interests of the larger countries. However, parliaments could bring a more people-centred approach to the deliberations, which would be particularly useful and might in fact make the decisions of the Assembly more attractive and therefore more implementable.

14. For parliaments to be able to do so, they must be informed about and engaged in issues relevant to the United Nations. That was why meetings such as the annual parliamentary hearing at the United Nations were so important. It was a welcome development that parliamentarians were now routinely included in national delegations to major United Nations meetings and conferences. The Secretary-General, taking the lead, regularly addressed national parliaments in the course of his travels. Similarly, representatives of the United Nations away from Headquarters should actively engage parliaments.

15. As permanent representatives reported to the foreign ministry, that ministry should distribute to other relevant ministries the resolutions being voted on. The resolutions should be posted on websites, in the national language(s) and easily accessible to the public, together with an explanation of the vote and a schedule of the actions planned at the country level to implement the resolutions. Also, a mechanism similar to the universal periodic review conducted by the Human Rights Council should be developed for General Assembly resolutions, with Member States

coming before their peers to report on what they had done to implement them. To help give a strong parliamentary dimension to United Nations activities, in 2007 IPU member parliaments decided to create a Committee on United Nations Affairs. That body met once a year, offering a framework for direct interaction between parliamentarians and high-level United Nations representatives and for parliamentary input to the major international conferences and summits.

> The problem is that the General Assembly has no muscle to enforce its resolutions.
>
> Janós Horváth
> Doyen of the Parliament of Hungary

16. Over the years, the General Assembly had adopted by consensus a number of resolutions on cooperation between the United Nations, national parliaments and IPU, reflecting a growing will to go beyond traditional practice and favour an integrated, dialogue-based approach. That, in turn, would ensure a parliamentary perspective in the debates on major international challenges and boost buy-in with respect to international commitments. In its resolution 65/123, the General Assembly decided more systematically to engage with the Inter-Parliamentary Union in organizing a parliamentary component of major United Nations deliberative processes. That very ambitious resolution opened up a host of new prospects.

17. Dissenting voices argued that placing the onus for the implementation of United Nations resolutions on parliamentarians was not realistic. A resolution calling for a moratorium on the death penalty was cited as an example: if parliamentarians had campaigned during elections for capital punishment, would they seriously try to make their Government implement the resolution? If parliamentarians genuinely believed that in the present economic climate their Government could not afford to do so, how active were they going to be in urging Government to comply with the resolution calling for fulfilment of the pledge to provide 0.7 per cent of gross domestic product as official development assistance? Moreover, at the practical level, should the obligation to implement resolutions apply only to those adopted by consensus, only to those for which a country had actually voted, or to all of them?

18. All the suggested means of ensuring accountability begged the question of what Member States wanted the General Assembly to be. Should it take a maximalist approach, claiming for itself all the functions enumerated in the Charter and excluding other groupings, or a more moderate approach, leaving space for other bodies to act in their areas of expertise? Member States themselves had to make that decision; however, there again was a divide between the developed countries, which saw the issue as being procedural, and the developing ones, which thought that there were fundamental philosophical issues to be resolved.

19. In parallel with its consideration of the issue of accountability for General Assembly resolutions in general, the parliamentary hearing paid specific attention to resolution 65/283, which had been adopted only four months previously. Participants considered how parliaments could contribute to the implementation of

that important new commitment. In the resolution, the Assembly acknowledged the growing interest in and provision of mediation, as well as the need for cooperation among the actors involved in a specific mediation context, and encouraged Member States to develop national mediation capacities, as applicable, and to promote the equal, full and effective participation of women in all forums and at all levels of the peaceful settlement of disputes.

20. The Assembly requested the Secretary-General to submit a report on the implementation of the resolution and to develop guidance for more effective mediation. To that end, the Secretary-General would be holding a broad consultation process with Member States and civil society. The United Nations strongly encouraged parliaments, through IPU and national Governments, to contribute to that process.

21. Violence prevention depended on the ability of civil society to organize. It depended on local peace committees, peace education, working for non-violent elections and using home-grown methods of conflict resolution. Parliamentarians should call on their ministries of education to integrate peace education into school curricula, covering human rights, gender equality, sustainable development, social and economic justice, disarmament and traditional peace practices.

22. The existing United Nations-IPU framework of partnership should help operationalize the resolution. IPU could help by calling on parliamentarians to volunteer for the roster of well-trained and geographically diverse experts to act as mediators. A mechanism might be developed for ensuring the involvement of women in mediation, similar to the processes adopted with great success by IPU to promote the participation of women parliamentarians in national delegations to the General Assembly.

23. The following were the key findings of session I:

- Effective oversight requires concrete mechanisms to institutionalize the process of continuous interaction between national parliaments and their Governments around decisions of the General Assembly. A case in point is the groundbreaking resolution on mediation, in the implementation of which parliaments can play an active role. Such mechanisms could include parliamentary committees on United Nations affairs, regular hearings with the country's ambassador to the United Nations and requiring foreign ministries to forward all resolutions adopted by the Assembly to parliament for review.
- In order to fulfil their oversight role, parliaments must be able to go beyond their internal tensions and hold Governments to account for their decisions on the international stage.
- IPU plays a crucial role in facilitating parliaments' involvement by means of practices that only a few years ago were considered unthinkable, such as inviting members of parliament to join their national delegations to United Nations conferences, holding parliamentary hearings on specific issues or facilitating contact between parliaments and the United Nations operations in their own country.

Session II. Youth participation in the democratic process: challenges and opportunities

Panellists: Farroq Hamid Naek, Chairman of the Senate of Pakistan; Jean-Francis Zinsou, Permanent Representative of Benin to the United Nations; Daniela Bas, Director of the Division for Social Policy and Development, Department of Economic and Social Affairs, United Nations; Sena Hussein, Online Community Manager, Global Youth Action Network/TakingItGlobal; Abderrahim Foukara, Bureau Chief, Al Jazeera, acting as moderator.

24. At the session, Mr. Naek outlined how Pakistan was trying to encourage young people to become involved in politics and said that they had played a defining role in the revival of democracy in Pakistan in 2008. Ambassador Zinsou discussed the position of youth in the politics of the developing world and also referred to the findings of the High-level Meeting of the General Assembly on Youth: Dialogue and Mutual Understanding, held in July 2011, at which he had served as co-facilitator of the outcome document. Ms. Bas described the approach to youth political participation taken by the Division for Social Policy and Development and, like Ambassador Zinsou, spoke of the benefits drawn from the World Programme of Action for Youth. Ms. Hussein described her organization's interactions with young people involved in various non-traditional political actions around the world.

25. Young people's potential contributions to parliamentary democracy must be encouraged through investment in capacity-building. That must include empowering young people by providing greater access to human development opportunities, for which both the executive and the parliament bore responsibility. The High-level Meeting on Youth had come to the conclusion that the youth policies and strategies adopted to date had yielded uneven results, in part because of the negative economic and social consequences of globalization and climate change. Unemployment among youth, even educated and well-qualified youth, accounted for much of their frustration. The choices made by decision makers were not neutral: they could either benefit or disadvantage young people. The High-level Meeting recognized the responsibility of the United Nations to guide the activities of States seeking to promote policies to overcome the obstacles to the full development of young people. The Secretary-General had been entrusted with making recommendations to improve youth-related United Nations programmes and structures and with developing a set of indicators associated with the World Programme of Action for Youth aimed at helping States evaluate young people's situation and gauge the performance of youth-related policies.

26. It was undeniable, and regrettable, that the voice of young people, who had a legitimate and important role to play in society, was not adequately heard and that their contribution to society was not recognized. Most unfortunate of all was that young people today were perceived as being incapable of making decisions on their own, with the result that their contribution to decision-making processes was minimal. Parliaments must take significant strides towards promoting partnership between youth and the legislative process, which could help groom the politicians of the future. Political awareness generated a sense of responsibility among young people and empowered them to make informed decisions about their choice of Government.

27. In the discussion that followed, there was broad agreement that in most countries, young people were turning away from traditional political processes, understood to be partisan politics, election campaigns and voting. However, there was considerable disagreement among participants on the value of some of the unconventional actions being taken by young people instead.

> We can no longer only include the types of youth voices that we want to hear. We need to include the ones that are fighting to be heard.
>
> Sena Hussein

28. Young people were expressing their political stance, their conviction that current models of society had failed, using two, often related, avenues: expressions of opinion on electronic media and social networks; and direct action in the streets, as seen in the "occupy" movements in the United States of America and elsewhere, the *indignados* movements in Spain and Latin America, the Arab Spring and some events in London.

29. There was consensus that several of the direct-action movements around the world were highly political expressions of frustration with conventional processes. For many young people, those processes did not seem to offer a way to express their discontent with the world as it was, with the inequalities they saw around them and by which they were disproportionally affected and, notably, with the damage that was being done to the environment. It was suggested that the young people who were turning away from conventional political processes might not be expressing a disdain for the concept of politics per se but rather an intense desire to see politics working in a different way, going beyond its traditional boundaries.

> There is a difference between youth action in the developed and the developing world, with many of the facilities on offer in the countries of the North — computers, Internet, social media, smartphones — not being nearly so freely available in the South.
>
> Farroq Hamid Naek

30. Various reasons were advanced for youth's current disenchantment with traditional political processes. One very fundamental explanation was simple ignorance of how such processes were intended to work. If traditional parliamentary processes seemed obscure and opaque to young people, they would not be able to imagine how they could use those processes to change the structure of a world they perceived as unjust. That was even more true in those countries where parliaments did not have a real political role, but merely rubber-stamped Government decisions. Youth would question how such parliaments could empower them when they themselves were lacking in power. Noting, too, the lack of young people in traditional political institutions, they would wonder what possible interest such institutions could have to their concerns and in solving them. Other speakers felt that young people had turned their back on the traditional mechanisms because they

perceived that even in advanced democracies, the whole process had been skewed to the benefit of a small elite.

31. Several possible remedies for the situation were discussed. In Pakistan, for example, Youth Parliament Pakistan served as a valuable forum for the expression of young people's views about a range of national and international issues. The debates in the Youth Parliament were intended not only to help young members in their personal development as citizens, but also to allow for their views on vital issues facing the nation to be articulated and conveyed to the Government. A number of other projects were in the pipeline to mainstream youth into events concerning national development, democratization, social harmony and progress. Pakistan had also initiated a national internship programme to encourage youth involvement in public sector organizations.

32. Representatives of other countries described their own youth parliaments or similar institutions. Other approaches tried and tested in various countries included presentations by parliamentarians and political workshops at schools and colleges to nurture and promote the democratic ideal, and internships and junior office positions within parliaments. At the global level, consideration was being given to the best way systematically to involve young people in the work of the United Nations. The Division for Social Policy and Development participated in internship and Junior Professional Officer programmes within the Secretariat. There might also be opportunities for young people to be part of delegations to the General Assembly, whether as young parliamentarians or young people not (yet) involved in the political process.

> Do not give us the pulpit if all you really want to do is abate your privileged guilt by hearing us speak or parading us around in NGOs or youth cabinets. That will only make us want to hit back and fight for these substantive changes without your cooperation.
>
> London demonstrator, quoted by Sena Hussein

33. The overriding aim was to create political awareness among youth, leading to a sense of political responsibility. The first stage was simply to instil awareness and knowledge of how politics, or governance at its various levels, actually worked. The desire to participate, it was hoped, would then follow. Even in remote rural areas, political awareness among young people could be fostered, for example by using traditional itinerant storytellers to impart concepts of civics, democracy and politics. Implementation of the World Programme of Action for Youth had been found to provide tools and guidance that enabled young people to become more active and capable political actors.

34. Political institutions also had to be prepared to make adjustments. If politics-averse youth, who evidently had strongly felt concerns about their society, were to be brought back into the ambit of traditional parliamentary processes, parliaments throughout the world would need to examine their procedures with a view to making them more accessible and less obscure to the young. It was up to parliamentarians and other politicians to take the first step. A second necessary adjustment was for traditional political authorities to recognize that the street movements were a

legitimate political expression, not something to be simply suppressed by the security forces acting at the behest of the established order. Similarly, the social media and networks being used by young people to voice their views should be regarded as legitimate forms of free expression, not something to be censored and forced out of existence, and certainly not to be shut down with transparent excuse of combating online piracy. It might be disturbing to some Governments to think of such a world of free-floating ideas beyond censorship or control, but they had a duty to recognize that such forums came under the concept of freedom of expression, which they were duty-bound to uphold.

35. In many places, politicians and Government officials ought to rethink their approach to youth, seeing young people as an opportunity instead of a problem. Engaging with the ideas of youth could invigorate democracies, spur innovation and create societies which were more responsive to all citizens. However, as political institutions sought to involve more young people in their activities, they needed to guard against taking an approach that could be interpreted as tokenism. If such institutions had originally been built on the premise that youth had no active role to play, then simply reserving a token number of seats for young people was inadequate. Instead, the fundamental understanding of such institutions needed to change. Radical young people would be prepared to cooperate with traditional political institutions if the latter allowed them space to realize their aspirations to liberty, dignity and equity. Young people did not wish to remain on the sidelines or to act as mere foot soldiers for political parties; they wanted to be counted among the decision makers.

36. The following were the key findings of session II:

- Addressing solely the issue of decline in youth participation in traditional forms of political participation during elections and in political parties will not suffice to effectively include youth in democratic processes. It has to be understood that economic and social exclusion is not only a basis for demands for change among youth around the world, but that economic and social exclusion also impedes participation.

- In order to find workable solutions to the diverse problems that individual countries are facing, political leaders must not only involve young people in the decision-making processes but must build partnerships with them. More importantly, young people have to feel that their participation in political processes can make a difference; this is only possible in democracies where parliaments effectively fulfil their oversight roles.

- Some practical steps that parliaments can take to increase traditional forms of political participation among youth include mandatory voting and parliamentary quota systems, which in turn could motivate young people to become more involved in politics. However, parliament might not be the appropriate platform for change; youth participation must start within parties to create a different political culture.

- As long as political institutions that have led to the exclusion of youth remain unchanged, political inclusion will remain tokenism and cannot lead to real change. Political leaders need to think "outside the box" and learn to understand the language and processes that are used by young people. Practical steps to achieve this include e-voting and the use of blogs by members of

parliament to communicate more effectively with their constituents, in particular young people.

Session III. Accountability in the management of public funds: good practices and model legislation for budget transparency

Panellists: Mevlüt Çavuşoğlu, President of the Parliamentary Assembly of the Council of Europe; Ivonne Passada, former Speaker of the House of Representatives of Uruguay; Jim McLay, Permanent Representative of New Zealand to the United Nations; Angela Kane, Under-Secretary-General for Management, United Nations; Vivek Ramkumar, Manager, Open Budget Initiative, International Budget Partnership; Peter Rajsingh, Gallatin School of Individualized Study and Stern School of Business, New York University, acting as moderator.

37. At the session, Mr. Çavuşoğlu spoke from the perspective of the Council of Europe, while Ms. Passada offered reflections from her region. Ms. Kane described the budget process at the United Nations, Mr. Ramkumar outlined the views of civil society and Ambassador McLay shared insights gained from his involvement in budget issues in his different capacities as a lawyer, a politician, an investment banker and, most recently, a diplomat.

38. Many developed countries had entered a vicious circle. Years of imprudent spending and living beyond their means had eroded national capacity to maintain living standards and invest in a better future. Worse, the vicious circle was also eroding national sovereignty in a number of countries as foreign creditors aggressively claimed their due, and the spectre of insolvency could not be ruled out. At the same time, duly elected officials were losing control of decisions regarding fiscal, monetary and economic policies as those decisions were increasingly becoming matters discussed in unelected bureaucracies. Consequently, many countries were now under pressure to impose fiscal austerity and reduce their debt burdens. Whether such measures were fully justified depended on each country's macroeconomic situation. In any case, people would only accept austerity measures if they felt that funds were well spent and that appropriate accountability systems were in place.

39. There was a growing demand by the citizenry worldwide for greater accountability in their Government's budget processes. Gradually, and to varying extents in different countries, Governments were responding to those demands, thereby enabling the creation of budgets that were in line not only with the political purposes of the Government but also the social needs of the populace. Parliaments had an important role to play in bringing that process to fruition. Uruguay was the only country in Latin America with a five-year budget, i.e., one that spanned the entire term of a Government. In each of those five years, parliament undertook an evaluation of the budget. However, improvements were needed, particularly in assessing the return on investments made. Research had shown that countries whose budgets were closely scrutinized and evaluated by independent bodies demonstrated improved social development in comparison with others. Examples in Latin America included Brazil, Chile and Costa Rica. However, in numerous other countries of the region, the highest audit institution was subordinate to the executive branch, which undermined the necessary objectivity of that institution. Where there were no

independent audits of State accounts, parliaments should put in place the necessary legal framework to provide for them. In addition, parliamentarians should strive to enhance transparency in public procurement and, where applicable, privatization processes. That could be done by establishing appropriate codes of conduct and adopting legislation on conflicts of interest and corruption.

40. The budget process of the United Nations was highly transparent. The regular budget of the United Nations was US$ 2.2 billion (not including the peacekeeping budget, which was some US$ 8 billion) and it was subject to scrutiny by Member States, which were the conduit for further public involvement. In the budget planning cycle for each biennium, a strategic framework was derived from legislative mandates, which was the basis for formulating the programme budget. A number of intergovernmental expert bodies deliberated on all the steps of that complex process, including the Advisory Committee on Administrative and Budgetary Questions, the Committee for Programme and Coordination and the Fifth Committee of the General Assembly. Lastly, the General Assembly, the plenary of all 193 Member States, adopted the budget.

41. The full involvement of Member States in all aspects of the budget process ensured transparency. Furthermore, the United Nations was currently working to further strengthen accountability in the system, the overall aim being to put in place a model that effectively linked political accountability (Member States) with personal accountability (senior managers) and managerial accountability (management and staff). Relevant tools included the financial disclosure policy that covered all senior managers and those involved in financial and procurement-related decision-making — over 3,500 staff — and the newly launched online contributions portal that allowed all Member States to see the level of their respective contributions in real time. In addition, the United Nations was in the process of introducing the International Public Sector Accounting Standards to ensure that it was following current best practices.

42. However, the disadvantage of the very comprehensive budget system was that there was in fact too much information available. In the current budget cycle, for example, 344 documents had been issued, a staggering total of 6,499 pages. Moreover, Member States could also ask questions about any aspect of the budget, and in 2011, over 1,000 pages had been issued in response. An overriding problem was that once a mandate existed, Member States would never allow it to be cancelled: no committee was ever dissolved, no function ever terminated.

43. The United Nations budget process therefore needed to be rethought in its entirety, to become more strategic and focused, with a greater emphasis on results and with far less micromanagement. The Secretary-General had called for an overhaul in order to streamline the process by having a single United Nations budget document containing all the salient facts and figures but far shorter than what was currently produced. By supporting those recommendations in their respective jurisdictions, parliaments could help create more transparency and accountability in the management of public funds at the United Nations.

44. Public finances tended to be scrutinized much more closely than company accounts and there were ways to strengthen oversight. There was room in the audit process for private sector auditors to examine specific Government agencies, even though the overall audit of the Government's finances should remain in the hands of a public sector auditor. An important role, but one in need of improvement, was that

of the media. Generally speaking, the media did not do a good job of scrutinizing public expenditure, relying basically on parliamentarians to expose problems, which they in turn publicized. A third important aspect of accountability in the management of public funds required whistle-blowers and legislation to protect them.

45. The multi-stakeholder Global Initiative for Fiscal Transparency had recently been created to advance the development of global standards. At present, the initiative included the Governments of Brazil, the Philippines, the United Kingdom of Great Britain and Northern Ireland and the United States of America, as well as international financial institutions such as the International Monetary Fund (IMF) and the World Bank and civil society organizations such as ONE, an advocacy and campaigning organization, and Greenpeace International. The International Budget Partnership had informed the leadership of the Inter-Parliamentary Union about the initiative and would welcome the active engagement of IPU and its member parliaments.

46. The Open Budget Index had been developed by the International Budget Partnership in response to difficulties faced by its membership in obtaining accurate information on Government budgets. Countries were ranked according to the availability of eight key budget reports and the comprehensiveness of the data, and the results were published in the Open Budget Survey.[b] The survey also assessed the extent of effective oversight provided by legislatures and audit institutions.

47. Governments should develop multiple forums for public engagement in budget matters, including drawing on existing mechanisms such as participatory budgeting and social auditing. Prior to any consultation, they should issue notifications about opportunities for public participation so that citizens could be prepared to provide input. Governments should issue reports on the input received through public consultations and report on how it had been addressed in budget decision-making.

48. There was a need for a new budget transparency standard. While several standards existed, such as the Best Practices for Budget Transparency of the Organization for Economic Cooperation and Development published in 2000 and the 2007 IMF Code of Good Practices on Fiscal Transparency, or those developed by civil society organizations, they were inconsistent and contradictory. Moreover, they did not attribute sufficient weight to the oversight role of parliament.

49. Some speakers expressed the view that a global budget transparency standard should not be coercive because the degree of appropriate budgetary openness would vary from country to country. The United Nations and IPU should play a leading role in creating such a standard by promoting the participation of international organizations and civil society in order to gather best practices and promote experience-sharing among parliaments at the regional and international levels, with meaningful engagement by all stakeholders. Any new global budget transparency standard should be relevant for all countries. One way of achieving that aim would be to take a graduated approach, in which different standards were created for countries at different stages in the development of budget transparency practices. Such a norm should also underscore the role of legislatures and audit institutions.

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[b] Available from internationalbudget.org.

> A key challenge facing civil society organizations and legislatures is getting access to timely, comprehensive and high-quality information on Government budgets.
>
> Vivek Ramkumar

50. A legislative framework such as the New Zealand Fiscal Responsibility Act, stipulating how the economy should be managed over an economic cycle, was seen to be a highly desirable instrument for ensuring public scrutiny of Government budgeting. Another key legislative instrument was freedom of information laws that could be invoked if Governments were reluctant to open their budgeting to scrutiny. It was suggested that Governments should be compelled to make some form of presentation of the public accounts in a format that would be understandable by both parliamentarians and the wider public.

51. Some parliamentarians regretted that their public accounts committees and audit offices lacked independence and resources. That had a serious impact on the quality of audit reports, making it difficult for the public or for parliamentarians to evaluate accountability. In addition, many parliaments lacked the legal authority or power to make effective changes to national budgets or the budgetary process, for example to provide sufficient time for the legislature to discuss pre-budget policy statements and to scrutinize the final executive budget proposals.

> Why does the United Nations continue with such an archaic process? Because Member States are not willing to change it. We have made proposals to make the process more user-friendly, in part by building on the good practices of other international organizations, but so far those changes have been resisted.
>
> Angela Kane

52. The Government had a duty to inform the public about how to understand the budget and to provide all the information needed for citizens to have a firm grasp of what was at stake. The Government also had a responsibility not to constantly change the way the budget was presented, which could confuse those examining it. Both parliament and the public had to be given time to study the budget thoroughly. Pressure from Government to rush through the process must be resisted. Consequently, parliamentarians must insist that pre-budget hearings be held, involving the country's key stakeholders. Such hearings must be open to the public or broadcast live. Through new information technology, it was possible to gather the views of large numbers of people in a short time. Campaigns must be mounted to raise awareness of how the budget is being spent, particularly in countries with a high level of illiteracy.

> Today bureaucracy and unaccountability seem to prevail over democracy. Italy has surrendered its monetary sovereignty by joining the euro, not its political sovereignty, but now we are ruled by an unelected Government. Lagarde, Draghi, Barroso: they have never been elected, at least not to their present positions; even Sarkozy and Merkel have not been elected to govern Italy. How can believers in democracy remain silent at this outrage?
>
> Senator Antonio Martino, Italy

53. For parliamentarians to fulfil their task of scrutinizing the budget, parliaments should have a standing committee on financial and budgetary affairs. Such a committee should be chaired by a member of the opposition, a practice that was already being followed in some countries. However, the opposition should not use the budget hearings to try to make short-term political gains. To be effective, such committees must have the power to subpoena people and documents. They also had to be provided with adequate resources. There should be a regular review of how they function and improvements should be made where necessary. In parallel with a "general-purpose" budget committee, it might be advantageous to establish specialized parliamentary committees, or rapporteurs, to monitor specific ministries' fields of activity, or to concentrate on certain particularly challenging budget-related issues such as official development assistance, which was often handled by several ministries and was thus difficult to track.

54. Other requirements needed to be fulfilled to ensure that the oversight role was genuine and not just a mere formality. Mechanisms must be in place to ensure that any doubts or questions about the budget raised by the opposition could not be simply vetoed by the Government, thereby negating the oversight role of parliament. Where parliamentary oversight took the form of questions to ministers, the latter must be compelled to give real answers and not just platitudes.

55. The key findings of session II were the following:

- There is a clear need for a global budget transparency standard for all parliaments to follow in order to ensure democratic accountability. However, it should not be expected that all parliaments, regardless of their level of development, will be able to meet such standards without adequate time and resources.
- Examination of a highly transparent but cumbersome budget process pointed to the need for a more stringent budget process that was also more accessible to ordinary people.
- Even where parliaments have the legal authority to exercise appropriate budget oversight, lack of capacity often prevents them from doing so. Oversight capacities can be enhanced by ensuring the independence of auditor reports, establishing parliamentary budget offices, making more time available for parliaments to review the budget proposal, disclosing the Government proposal to the public, holding public hearings and publishing "citizens' budgets" to help people understand how their money is spent.

- Parliaments are increasingly losing control of the budget process as more and more unelected bureaucracies impose their standards for fiscal, monetary and other economic policies on duly elected Governments and parliaments. In order for the budget process to be politically accountable, parliament's authority vis-à-vis these bureaucracies be restored.

- In some countries, certain funds — frequently external aid or oil revenues — are not recorded in the budget and are not scrutinized by parliamentarians. There was general agreement that such lack of oversight is dangerous.

- In examining the budget, parliamentarians must not only concentrate on appropriations but also think about the sources of the country's income. Countries that are recipients of large amounts of development assistance find it difficult to come to terms with the fact that donors are also running short of money. This makes it all the more important for parliamentarians to question where money is coming from and how it is being spent, in order to try to find ways to reduce the country's dependency on aid.

Session IV. Strengthening the links between national institutions and civil society: towards more open societies

Panellists: Ranko Krivokapić, Speaker of the Parliament of Montenegro; A. K. Abdul Momen, Permanent Representative of Bangladesh to the United Nations; Corinne Woods, Director, United Nations Millennium Campaign; Jeffery Huffines, United Nations Representative of CIVICUS: World Alliance for Citizen Participation; Evelyn Leopold, former Bureau Chief, Reuters, acting as moderator.

56. At the session, Mr. Krivokapić examined the political role of civil society, while Ambassador Momen focused more on its role in development. Ms. Woods talked about the role of civil society in achieving the Millennium Development Goals and Mr. Huffines offered a general socio-political view of the question.

57. Respect for the law and its uniform application had long been recognized as prerequisites for building the trust of citizens in State institutions. The State must guarantee fairness to its citizens and they in turn must respond with trust in the institutions. The fundamental duty of the public official was to commit him/herself to the public good, regardless of whether the official was from the legislative, executive or judicial branch of Government.

58. Partnership among democratically elected authorities, non-governmental organizations (NGOs), media and citizens was a fundamental principle of an open society, with civil society functioning as an organized autonomous voice of the public. In particular, it could act as a counterweight to collusion between politicians and bureaucrats which, although possibly quite unwitting, could potentially carry the seeds of corruption. However, the activities of NGOs could not replace legal and constitutional authority because a democratic structure of power was necessary to guarantee observance of human rights, enforcement of accountability and personal responsibility. That being said, an NGO might well be able to partner with the State to help provide cheaper and faster public services.

> Freedom does not exist if it is not guaranteed by the State, but only the State controlled by the citizens can offer a true feeling of freedom.
>
> Ranko Krivokapić

59. The Balkans had demonstrated that the fall of one system did not necessarily result in a better one, but could lead to periods of great instability. That sustainable democratization took a lot of time and effort was a very important lesson for those involved in the changes in the Arab world.

60. Bangladesh had a vibrant and well-organized civil society and its organizations contributed significantly to the advancement of various sectors of the population, in particular women, children and vulnerable groups. The Government strongly encouraged the involvement of NGOs in development activities both locally and centrally, and its development initiatives had a "human face" precisely because of civil society engagement in the process of achieving sustainable economic growth, peace and development. While the constitutional and statutory laws provided for protection of fundamental freedoms and human rights, civil society acted as a watchdog to ensure their fair implementation. The vigilance of civil society had contributed positively in the field of safeguarding human rights, reducing corruption, promoting women's political participation, even-handed law-enforcement and pro-people decision-making.

61. Partnerships between civil society and national institutions required the creation of a culture of openness, accountability and representativeness in which each side respected the criticism and suggestions of the other and cooperated to create stronger democracies. Non-governmental organizations that were funded by foreign agencies or were acting on behalf of a specific interest group needed to review their position and strike a balance between the interests of their funding organizations or interest group and the national interest. For NGOs to be seen as acting in the general interest, it was important that they should not be too closely associated with any political party, whether in power or in opposition.

62. National institutions would be able to fulfil their mandates only when there was a strong and vibrant civil society ready to provide support. It was important for all stakeholders to participate in national development, as that promoted ownership and accountability in achieving common goals.

> The Millennium Development Goals provide a framework; new technology provides an opportunity.
>
> Corinne Woods

63. The achievement of a global undertaking such as the Millennium Development Goals hinged upon an important factor that was beyond technical expertise: political will. It was in the space created by the global commitment to achieve a vision such as the United Nations Millennium Declaration that the links between national institutions and civil society could be strengthened, by means of a constructive

citizen-State engagement process. National institutions planned and delivered services, but ensuring their effectiveness required feedback on their quality. At the local level, awareness had to be created to ensure citizens' confidence in and commitment to that feedback process. Modern communications technologies could help facilitate citizens' feedback, transmitting their voices directly rather than mediated through the organizational layer of an NGO. Such technologies also offered possibilities for interaction between citizens and national institutions upon which the foundations of the post-2015 framework for achieving the Goals could and should be built.

64. The Arab Spring and the Occupy Wall Street movement had sprung from social movements that were contained within a new sphere, rather than from organized NGOs, which could become obsolete. It was futile to try to define how to interact with traditional NGOs as the nature of civil society was changing. Parliamentarians should instead focus on what forms citizen participation could take in the immediate future. There might be a need for new institutional processes or frameworks to be set up by parliaments for the purpose of engaging with civil society in the new and less structured paradigm.

65. Looking at the situation of civil society at the end of 2011, the United Nations representative of CIVICUS said that the heady optimism of the 1990s that had followed the fall of the Berlin wall and its promise of a global wave of democracy and freedom was followed by a decade during which the war on terror was used as an excuse to restrict freedom of information, expression and assembly.

66. Even the financial implosion of 2008 and the resultant economic and fiscal crises had not yielded significant changes, as Governments deemed banks too big to fail and citizens too small to matter. The financial crises had exacerbated the pressures on civil society, the erosion of political support for the interests of "the other" and the prioritization of economic interests over human rights and political freedoms.

67. The seismic shift in geopolitical equations meant that countries that had been champions of democracy and human rights became more willing to turn a blind eye to violations if the States perpetrating them were important sources of capital or resources. Between 2009 and 2010, CIVICUS had tracked 90 countries that changed laws or policies intended to rein in civil society, representing a concerted criminalization of dissent.

68. In 2011, the Arab Spring had renewed faith in citizen action around the world and catalysed citizen movements such as Occupy Wall Street, as the people often labelled "ordinary citizens" finally lost patience with being trapped between States that did not listen and markets that did not care.

> One definition of civil society is that it is the sum of institutions, organizations and individuals located between the family, the State and the market, in which people associate voluntarily to advance common interests.
>
> Jeffery Huffines

69. Those popular movements were challenging the conventional definitions of State, market and civil society and the relations between them. They were resisting the imposition by stealth of new social contracts that reduced civil society to low-cost providers of public services rather than advocates for the excluded and watchdogs over the exercise of power. They were challenging definitions of national sovereignty that had already become blurred by global threats such as climate change, pandemics and terrorism. Empowered by new technologies, they were radically redefining norms of accountability and participation. They were united in their fluid, horizontal forms of organization and their use of new technologies was helping them reclaim an active voice in governance.

70. In the run-up to the United Nations review of the Millennium Development Goals in 2013, CIVICUS and other organizations were seeking to engage citizens worldwide in national debates about the kind of world they wanted. The question was how civil society and parliaments could work together to address the democratic deficit and poor distribution of power at the global level so that the voices of all citizens could be heard.

71. In the discussion following the panellists' remarks, several delegates described the frameworks in their countries within which NGOs interacted with the Government. It was suggested that while the developing world faced the problem of a lack of communication between parliamentarians and civil society, the developed world was struggling with unequal access by civil society to parliamentarians owing to the activities of lobbyists and special interest groups that distorted that relationship by means of financial contributions. A fundamental question was therefore how interaction among parliamentarians, political leaders and civil society could be enhanced, bypassing the groups that had their own exclusive interests. The answer seemed to lie in the creation of an institutional framework within the parliamentary system. For example, the parliamentary committees on any given issue should reserve some space for civil society to advance its views on important national issues. Mutual respect was fundamental, whether or not there was agreement on the views expressed.

72. While citizen participation should be welcomed, some participants warned against having too idealistic a view of civil society. In some cases, NGOs were working to undermine, by non-democratic means, the Government or the parliament. There were also cases where they were corrupt and lacked accountability mechanisms. Caution should be exercised in determining which groups were recognized as civil society, and who and what they represented. Clarity was needed in the laws governing civil society organizations, the composition of their governing bodies and their rules and statutes.

73. Other speakers suggested that there were many international NGOs operating in dozens of countries, which meant that foreign funding of NGOs was neither a novelty nor necessarily a bad thing. It was important for NGOs supported by foreign funding to abide by national laws and, in particular, to refrain from taking measures that might incite political violence. A code of conduct should be developed to frame the activities of the representatives of the various organizations and to regulate their financing. That was a task for parliamentarians, who had to craft laws that would ensure that civil society, like Government, was accountable. At the same time, it was the responsibility of Government to defend the rights to free speech and assembly, including for those expressing dissent and criticism.

74. The key findings of session IV were the following:

- Strengthening the relationship between national institutions and civil society is the basis for sustainable democracies. Not all countries develop at the same speed, but all countries have to move in the same direction.
- Civil society can only function effectively when the State cooperates in a spirit of partnership. It is up to national parliaments to establish a strong legal framework to ensure constructive dialogue, as well as accountability and transparency of civil society organizations.
- New technology may make civil society organizations obsolete, as citizens can organize themselves without an organizational intermediary. Parliamentarians need to seize the opportunities created by these new technologies and reach out to citizens in order to improve dialogue. It is up to parliamentarians to ensure that civil society is not trapped between States that do not listen and markets that do not care.

Summary of the meeting and closing remarks

75. Anders B. Johnsson, Secretary-General of the Inter-Parliamentary Union, thanked all the participants for their valuable contributions. Following the presentation of the summaries from the four main sessions of the parliamentary hearing, he stressed that the recommendations for action made by IPU would be submitted to its governing bodies for consideration of the best way to implement them. He added that in early 2012, the General Assembly was due to hold a special debate on interaction and cooperation between the United Nations, national parliaments and IPU. Parliamentarians clearly had a huge stake in the outcome of that debate and, consequently, IPU would invite them to take part in a discussion on the related issues that will take place in the lead-up to, and during, the IPU Assembly to be held in Kampala in March/April 2012. The thoughts expressed during the present parliamentary hearing would feed into that discussion, with the aim of developing a shared understanding of the way forward towards creating a stronger engagement between the United Nations, parliaments and IPU.

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Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Letter dated 24 February 2012 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General

I regret to note that the representative of Azerbaijan has once again taken up an initiative of circulating misleading and deceptive information related to the tragic events of 1992 in the settlement of Khojaly. This delegation has on numerous occasions reacted with anti-Armenian propaganda and falsifications on behalf of Azerbaijani authorities relating to those events.

It would be most relevant to recall the appeal of the international community, not least the European Court of Human Rights and numerous human rights organizations, to release the Azerbaijani journalists and human rights activists who had questioned the version of the Government of Azerbaijan on the Khojaly events.

Armenia reiterates its position, according to which progress in the negotiations for the peaceful settlement of the Nagorno Karabakh issue depends, inter alia, on the establishment of tolerance and restraint from hate propaganda. The Azeri initiative does not bode well for such objectives.

I request that the present letter and the attached statement of the Foreign Ministry of the Nagorno Karabakh Republic (see annex), in response to the letter of the representative of Azerbaijan, be circulated as an official document of the General Assembly, under agenda items 35 and 39, and of the Security Council.

(*Signed*) Garen **Nazarian**
Ambassador
Permanent Representative

12-24300 (E) 010312

Please recycle

Annex to the letter dated 24 February 2012 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General

22 February 2012

Statement of the Ministry of Foreign Affairs of the Nagorno Karabakh Republic

As the anniversary of the incident in Khojaly draws near, Azerbaijan is yet again immersed in its anti-Armenian smear campaign in relation to the 1992 events in the settlement of Khojaly. Khojaly is a village on the territory of the Nagorno Karabakh Republic (NKR), in close proximity to Stepanakert Airport, which was intensively and artificially populated by the Azeri Government, particularly with the Meskhetian Turk minority from the Fergana valley of Uzbekistan, in order to boost its non-Armenian population and give the village the status of a town. The Azeri propaganda machine is again busy promoting false accusations and falsified facts to the broad international community and its own citizens with slanderous statements directed at Armenia and NKR, while continuing to fuel hatred for Armenians.

On 25 and 26 February 1992, the authorities of the Nagorno Karabakh Republic organized a military operation to lift the blockade of the strategically vital airport near the settlement of Khojaly. The operation was also intended to neutralize Azeri military strategic locations rooted inside the settlement of Khojaly. It is from this location that the Azerbaijani OMON (special-purpose militia detachments) had periodically attacked nearby Armenian settlements by utilizing the Alazan, Crystal and Grad rocket systems for nearly a year, since the spring of 1991. During this time, dozens of Armenian civilians were killed and hundreds more wounded and/or kidnapped. The area's agricultural industry was wiped out completely by dispersing and killing thousands of cattle from nearby collective and private farms.

Owing to the lasting blockade, the situation was rapidly worsening in NKR. The local authorities were faced with a growing number of refugees from regional villages, coupled with the closure of most food-producing enterprises owing to the Azeri military blockade of all regional roads leading in and out of NKR. The situation was especially dire in Stepanakert (the capital of NKR), where food, medicine and fuel reserves were exhausted. Under such circumstances, the NKR authorities decided that lifting the airport blockade was an extremely important step to ensure the actual survival of the Republic and its civilians.

Aside from lifting the blockade of the airport, NKR authorities needed to neutralize the military base in Khojaly housing both the Azeri Special Forces OMON and the Azerbaijani Popular Front (APF) paramilitary forces. These military groups concentrated large quantities of manpower as well as strategic heavy offence weaponry deployed for an assault on the nearby cities of Askeran and Stepanakert. It is because of these indicators that a military operation on Khojaly was of increasing importance.

The military operation to lift the blockade of the airport commenced on 25 February 1992 at 11:30 p.m. and ended on 26 February at 3 a.m. Knowing that there were civilians within the village, NKR self-defence forces decided to open two corridors for safe civilian passage out of the settlement and informed the

Azerbaijani side. One corridor extended from the eastern outskirts of Khojaly towards the north-east, along the Karkar riverbed, while the second corridor was opened on the northern outskirts of the settlement towards the north-east of Khojaly. However, the Azerbaijani authorities chose to ignore that goodwill gesture and did nothing to lead the civilian population out of harm's way.

As a result of the military operation in Khojaly, NKR self-defence forces were able to rescue 13 Armenian hostages, including one child and six women, and confiscated two Grad MM-21 volley fire rocket installations, four Alazan units, one 100 millimetre howitzer and three units of armoured equipment. The NKR Artsakh Rescue Service also discovered 11 bodies of civilians from Khojaly and its outskirts. However, the video footage of killed civilians, which has been widely circulated by means of the Azeri propaganda, was taken later in an area 3 kilometres (2 miles) outside Askeran and 11 kilometres (7 miles) away from Khojaly. It is important to underline that this particular footage is aimed at spreading false accusations of alleged Armenian war crimes, while the footage itself was shot in an area where NKR forces entered only in the summer of 1993, over a year after the Khojaly offensive.

The NKR authorities had informed their Azeri counterparts about the intended military operation to neutralize the Azeri military positions within Khojaly two months prior to its commencement. This act of warning was repeatedly confirmed by Azeri officials; one such official was the former President of Azerbaijan Ayaz Mutalibov. However, as the row of civilians from Khojaly approached the Aghdam region, they were met with heavy artillery bombardment from the Azeri military. This was later confirmed by the former Azeri President Mutalibov, who interpreted this act of mutiny as an attempt to overthrow him from his post by falsely blaming him for carrying out such an order. It is important to note that at the time of the Khojaly operation, Azerbaijan was going through political turbulence in which factions were aligned against then-President Ayaz Mutalibov.

An Azerbaijani cameraman, Chingiz Mustafayev, was given access to the area where exchange of the bodies of the deceased was conducted. He made two recordings to document the bodies of the deceased, with a two-day intermission between the recordings. Upon his second recording, Mr. Mustafayev noticed that the civilian bodies were disfigured.

On a separate occasion on 2 March 1992, during an investigative flight over the area where the mass killing had occurred, journalists noticed that the position of the bodies of the deceased had been radically altered and that the number of injuries caused to the bodies had drastically changed. Given the fact that this was on the territory fully controlled by Azeri forces until the summer of 1993, it is fair to state that it was impossible for the NKR self-defence forces to have done this. Unfortunately, Azerbaijan continuously omits this important detail, which underlines that it was not possible for this particular killing to have been committed by the Armenian military forces. It is equally understood that the bodies were rearranged in such a way as to be able to then place the blame on the Armenian forces.

This fact was so shocking to Mr. Mustafayev that he shared it with President Mutalibov, who himself understood the severity of the situation. President Mutalibov even warned Mr. Mustafayev that if he shared this information with anyone he would be in great danger. Mr. Mustafayev was hesitant to believe the

Azeri stance on the incident as Armenian war crimes and started his own investigation. He informed the DR-Press Information Agency in Moscow of his conviction that the incident had not been committed by Armenians, but in fact may very well have been committed by Azeri militia members. After his statements had been received, Mr. Mustafayev was killed in unclear circumstances not far from the city of Aghdam.

Czech journalist Dana Mazalova, at the request of Azerbaijani authorities, was included in both groups of foreign mass media representatives who were flown out via helicopter to survey the incident in order to show the so-called Armenian atrocity by displaying the disfigured bodies scattered over the area. Having visited the place immediately after the events, Mazalova did not recall seeing any traces of disfigurement on the bodies on her earlier visit. However, this time, only two days later, the journalists were shown the disfigured bodies ready for filming. She noticed a considerable difference in the condition of the bodies only a few days after her initial visit, which can only point to crime scene tampering.

In the wake of the military operation, certain incidents still cast a shadow on the actual occurrence, and it is this lack of information that Baku constantly refers to in order to paint the scenario as a war crime. However, the key element in this incident is constantly overlooked in the rhetoric of the Azeri officials: the fact that, in an unfortunate time of military operations, the Azeri military ignored a clear warning and thus subjected its own people to harm. Furthermore, in the wake of such a tragedy Baku officials seem to repeatedly ignore the facts, which indicate malicious conduct and obvious war crimes against their own citizens. But the most important aspect of this incident is the fact that for the past 20 years, the Azerbaijani Administration has made Khojaly the cornerstone of its domestic and foreign policy by derailing the truth as to what exactly occurred in the wake of the Khojaly military operation. Even when numerous high-ranking Azeri officials, foreign human rights activists, journalists and, especially, former inhabitants of Khojaly refute Baku's stance on the incident, Azeri authorities remain steadfast in their denial of truth and continue pursuing this dangerous, slanderous rhetoric.

While the authorities in Baku are busy falsifying information in order to make their propaganda machine even stronger, there is an abundance of statements and testimonies which in fact point to the Khojaly incident not as an Armenian war crime, but rather as a twisted self-inflicted Azeri atrocity. An Azeri human rights activist wrote, "The town and its citizens were deliberately sacrificed for a political goal" (Azerbaijani newspaper *Zerkalo*, July 1992). Another testimony by the former Chair of the Supreme Soviet of the Republic of Azerbaijan stated, "The tragedy was committed by Azerbaijani authorities, specifically by a top-level official" (Azerbaijani newspaper *Mukhalifat*, 28 April 1992). Even former President Heydar Aliyev admitted that "the former leadership of Azerbaijan is also guilty" in reference to the Khojaly events, according to the Bilik-Dunyasi news agency. In April 1992, President Aliyev followed up with a shocking statement: "The bloodshed will profit us. We should not interfere with the course of events."

As the nationalist movement of the Popular Front came to power, ousted former Minister of National Security Vagif Huseynov stated, "The January events of 1990 in Baku and the events in Khojaly are the doings of the same people." He was hinting about the leadership of the newly elected Popular Front. Needless to say, he was soon arrested and sentenced.

The above-mentioned facts testify unequivocally to the fact that the Azerbaijani authorities are guilty of the civilian deaths in Khojaly and are responsible for committing a monstrous crime against their own people for political gain in a game of power struggle.

It is equally important to underline that Azerbaijan has been leading a campaign of falsifying facts in reference to the incident at Khojaly. One such falsification is the skewing of the actual number of victims. Only a few days after NKR forces had neutralized the military stronghold at Khojaly, Azeri officials stated that the total casualty count was estimated at around 100 civilians. Within a week, this number had jumped to 1,234, according to a parliamentary commission. The number was then adjusted to 450, while President Heydar Aliyev stated that the alleged "Azerbaijani genocide" had claimed thousands of civilian lives. In reality, at the start of the military operation official records put the population of Khojaly at barely 2,500 inhabitants. The majority were registered in Khojaly only to elevate its status from that of village to that of a town and were not actually present at the time of the military operation. Another large portion of the population fled the village at the start of the conflict in Nagorno Karabakh prior to the military campaign.

In early March 1992, Azerbaijani journalists Ilya Balakhanov and Vugar Khalilov brought footage of the crime scene to the office of the Memorial Human Rights Centre; in this footage were images of the civilian bodies documented by Baku television reporters and shot from a military helicopter. All attendants have reported that while the footage was being viewed, it was confirmed that the actual body count did not exceed 60.

To further prove the Azeri falsification campaign, NKR Foreign Ministry officials leaked onto the Web a falsified photo of what seemed to be the Khojaly casualties. This photo immediately gained popularity among Azeri websites and was even posted on the website of the Heydar Aliyev Foundation. The photo was placed on numerous websites as evidence of Khojaly massacres, when in fact NKR officials knew that the photograph actually depicted the unfortunate incidents in Kosovo, over a thousand miles away from Khojaly. It is worth mentioning that the Azeri Government constantly uses images from the Kurdish pogroms by the Turkish military as false evidence of the Khojaly incidents. The goal of this smear campaign is to captivate an otherwise uninformed audience in order to paint the NKR administration as aggressors and criminals, when in fact it is the Azeri authorities who are engaged in crimes of lies and murder.

One month after his resignation, ousted President Mutalibov gave an interview to the Czech journalist Dana Mazalova, which was published in *Nezavisimaya Gazeta*. Speaking about Khojaly, Mutalibov stated, "According to the Khojaly inhabitants who were able to escape, the incidents were orchestrated to oust my presidency. Political candidates (alluding to the Popular Front) orchestrated this incident in order to pin it on my presidency and eventually oust me. I do not think that Armenians are responsible for this crime; after all, they have acted professionally in numerous other cases where they easily had the chance to commit an act of war crime. The general reasoning is that a corridor for civilian passage was opened by the Armenian military. Why, then, should they fire at civilians, especially in an area near Aghdam where significant Azeri forces were available for civilian assistance?"

About 10 years later, Azerbaijani former President Mutalibov again confirmed his own idea in an interview with *Novoye Vremya* magazine: "The massacre of the Khojaly inhabitants was obviously organized by somebody in order to stir up the power struggle in Baku to dismiss my presidency."

In February 2005, Azerbaijani journalist Eynulla Fatullayev from the independent magazine *Monitor* spent 10 days in NKR, describing his visit in his writings and interviews. He also dared to challenge the truthfulness of Baku's official version of the death of some Khojaly inhabitants: "Once, 10 years ago, I met with the Khojaly refugees temporarily living in Naftalan (a city near Baku), who frankly told me ... that a few days before the attack, the Armenians, with the help of loudspeakers, kept warning the population of the scheduled operation, suggesting to the civilians that they leave the settlement and break out of the encirclement via a humanitarian corridor, along the Karkar River. According to the same Khojaly civilians, they took advantage of this corridor and the Armenian soldiers on the other side of the corridor did not fire on them ... Getting acquainted with the geographical area, I can confidently say that the assertions by Baku regarding the lack of an Armenian corridor have no grounds. The corridor really existed; otherwise, the Khojaly people, fully encircled and isolated from the outer world, could not have been able to escape the encirclement. Having passed through the area by the Karkar River, the refugees divided into groups, and, for some reason, some of them made their way to Nakhijevanik."

A few days after the publication of Eynulla Fatullayev's first report from Karabakh in *Monitor* magazine, the magazine's editor, Elmar Huseynov, was murdered by a stranger on 2 March 2005, in the entrance to his house in Baku. And Eynulla Fatullayev was convicted of a series of accusations, including high treason, for his report on Khojaly.

Former Azeri Minister of Defence Ragim Gaziyev has also confirmed that the Khojaly incident was a political trap for President Mutalibov. He states, "A trap was prepared for Mutalibov in Khojaly." This way, the organizers of the massacres in Khojaly could achieve two goals at once — oust Mutalibov, who had become less popular after the fall of the Soviet Union, and paint the Armenian forces as aggressors and perpetrators of war crimes. Meanwhile, the fact that Azeri forces were constantly shelling the populated city of Stepanakert, full of innocent civilians, was completely ignored by Azeri authorities.

A Khojaly woman said, in an interview with Helsinki Watch on 28 April 1992, "The Armenians delivered an ultimatum ... that it was better for the Khojaly inhabitants to leave the town with a white flag. Alif Gajiyev (leader of the Khojaly defence) informed us about it on 15 February (10 days before the attack), but this didn't frighten either me or the rest of our citizens. We did not believe at all that they would be able to capture Khojaly." Following these warnings, the majority of the civil population of Khojaly, having been informed of the planned operation, moved to a safe place prior to the incident. This mass migration away from Khojaly was widely covered by Azerbaijani television and radio. While covering the evacuation, the Azerbaijani mass media fuelled a negative attitude towards those leaving Khojaly and constantly harassed them. We should note that Khojaly, which had been turned into a town, was first vacated by the recent immigrants who had been artificially moved there, mainly Meskhetian Turks from Uzbekistan. Moreover, the municipal administration of Khojaly, which had been warned by the Armenian

party, asked for assistance from Azeri military personnel in the evacuation of the population, but these requests went unanswered. The Khojaly Mayor noted, in an interview with the Moscow newspaper *Megapolis Express*, "After getting the news on the expected operation on the capture of the town, I asked Aghdam to send helicopters for evacuation of the elderly, women and children. We were assured that a rescue operation was being prepared. But no assistance was provided." A board member of the Aghdam branch of the Azerbaijani Popular Front, R. Gajiyev, stated, "We could help the Khojaly people, having the corresponding forces and abilities, but the Baku authorities wanted to demonstrate to the people that they had no forces, in hopes of calling upon the army of the Commonwealth of Independent States for help."

As the facts clearly demonstrate, Khojaly inhabitants were merely abandoned. What these citizens did not know was that they were destined to become victims of an ugly power struggle.

At the start of the military operation, part of the civil population of Khojaly had left the settlement, and by late February 1992, according to independent sources, between 1,000 and 2,500 people had stayed behind, the majority of whom were soldiers of the Azerbaijani armed forces. Investigating the destruction in Khojaly, observers from the Memorial Human Rights Centre confirmed that in fact artillery shelling, and not urban street battles, had taken place. In a current accusation, Baku officials state that upon entering the town, Armenian forces took part in war crimes, when in fact most of the casualties resulted from shelling of the town. The NKR self-defence forces were modelled after national defence forces of modern nations, and with this in mind the regiments of the Karabakh military followed strict orders. Under this command it was clearly enforced that harming the innocent civilian population was illegal and punishable to the full extent of the law.

After the NKR military had entered the town, all civilians left in Khojaly were moved to Stepanakert, and a few days later, according to their will and without any preconditions, they were handed over to the Azerbaijani authorities. After a thorough investigation, the fact of the voluntary handover of the Khojaly citizens to Azerbaijan was confirmed in a report of the Memorial Human Rights Centre association in Moscow and attested to in a documentary film by a Saint Petersburg journalist, Svetlana Kulchitskaya.

It is noted, in the report of the Memorial Human Rights Centre, that a State forensic medical examination of 181 bodies (130 males and 51 females, including 13 children) was conducted in Aghdam, where all the refugees had come. The experts' conclusions state that 151 deaths were caused by bullet wounds, 20 by missile explosions and 10 by blows with a blunt object. The NKR authorities informed the observers that they had handed over to Aghdam about 130 bodies (all those killed in Khojaly and near Nakhijevanik), 96 of which were buried in Aghdam; the bodies of the rest were taken by their relatives.

A comparison of the information provided by different sources, including the Azerbaijani ones, convincingly demonstrates that the NKR self-defence forces did not plan, and especially did not carry out any acts of massacre against the civilians in the settlement of Khojaly.

It should also be noted that on 26 February, 47 Armenians were taken hostage in Khojaly, but only 13 were left there after the operation (including 6 women and a

child); the rest of the 34 hostages were taken by the Azeris in an unknown direction, and we have no information confirming their whereabouts in Azerbaijani prisons.

Summarizing the above, we can state that the inhabitants of Khojaly became hostages of unfair political games of the Baku authorities, who later turned this tragedy into a political manipulation. Authorities in Baku try to portray the Azerbaijani authorities' betrayal of Khojaly inhabitants as Armenia's revenge for the bloody pogroms in Sumgait. The entire propaganda is realized with expressive insinuations and aggravation of intolerance and hatred towards Armenians. By regularly raising the issue of Khojaly, Baku authorities are trying to draw the attention of the international community away from the massacres of Armenian civilians in Sumgait, Baku, Kirovabad, Khanlar and other settlements of Azerbaijan, where the widespread extermination of local Armenians has actually taken place. Such pogroms have also taken place in the borderline settlements of NKR, in particular Maragha village, where, in April 1992, the invading sub-units of the Azerbaijani regular army killed around 100 civilians.

Unfortunately, crimes committed by Azerbaijan are not given enough corresponding attention by the international community.

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Comprehensive review of the pension schemes for the members of the International Court of Justice and judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the comprehensive review of the pension schemes for the members of the International Court of Justice and judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/66/617). During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification.

2. The Secretary-General's report was submitted in response to General Assembly resolution 65/258, in which the Assembly took note that the review of the pension benefits of the members of the Court and the judges of the Tribunals would take place at its sixty-sixth session, including options for defined benefit and defined contribution pension schemes; decided to review at that session the pension schemes for the individuals concerned; and requested the Secretary-General to include in his report a proposal for a mechanism that could be used to determine retirement pension benefits, taking into account acquired pension benefit rights accrued prior to serving in the Court or the Tribunals.

II. Background

3. In paragraphs 3 to 18 of his report, the Secretary-General provides information on the background to and evolution of the pension benefits payable to the members of the International Court of Justice and the judges of the two Tribunals. The

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Advisory Committee notes, in particular, that the members of the Court are entitled to retirement pensions in accordance with Article 32, paragraph 7, of the Statute of the Court, and that the pension benefit for the judges of the two Tribunals is based on that applicable to the members of the Court, prorated to account for the difference in length in the terms of appointment (A/53/7/Add.6, para. 29). The Committee further notes from paragraph 15 of the Secretary-General's report that the General Assembly is the sole authority to determine the conditions of service and the pension benefits of the members of the Court and the judges of the Tribunals.

III. Current retirement benefits provided to the members of the Court and the judges of the Tribunals

4. The current retirement benefits provided to the members of the International Court of Justice and the judges of the two Tribunals (excluding the ad litem judges, who are not entitled to retirement benefits) are summarized in table 1 of the Secretary-General's report. In brief, under the existing defined-benefit scheme the individuals concerned are entitled to a retirement benefit equivalent to 50 per cent of their annual net base salary (excluding post adjustment), prorated for less than nine years' service, plus 0.154 per cent times their net base salary for each additional month of service in excess of 108 months. Taking as the basis the judges' current net base salary of $170,080, the minimum benefit payable after nine years of service is $85,040. A reduction of 0.5 per cent per month is applied in the case of early retirement (before the age of 60 years), and post-retirement cost-of-living adjustments are applied at the same time as the base salary is revised and at the same percentage. The pension scheme is non-contributory and includes a surviving spouse benefit, a dependent child benefit and a disability benefit. As indicated in paragraph 53 of the Secretary-General's report, the current scheme consists of a two-tiered system of accumulation, with a 5.56 per cent annual accrual rate in the first nine years of service, followed by a 1.85 per cent annual accrual rate thereafter, not exceeding a maximum benefit percentage of 66.67 per cent of final salary. The Advisory Committee notes from the report that, in general, the members of the Court and the judges of the Tribunals assume office at an average age of 58 years and remain in service for between 9 and 10 years. Most are married and some still have dependent children (A/66/617, paras. 29 and 37).

5. Table 3 of the Secretary-General's report contains a comparison between the current pension benefits of the members of the Court and judges of the Tribunals and those of judges serving in various supreme and international courts. The Advisory Committee notes that the most comparable courts are those of a multinational character, namely the European Court of Justice, the European Court of Human Rights and the International Criminal Court. Based on the applicable replacement ratios, and assuming that (a) the net base salary of the judges of those courts at retirement is identical to that of the members of the International Court of Justice and the judges of the Tribunals (i.e. $170,080); (b) they have served a nine-year term of office; and (c) they have attained the applicable retirement age, they would receive annual pensions amounting to $65,408, $30,600 and $21,250, respectively. The Committee notes, in this regard, that the figures provided by the Secretary-General are illustrative: actual benefit amounts will differ according to the salaries paid by the relevant courts.

6. As indicated in paragraph 28 of the Secretary-General's report, pension benefits for the members of the Court and the judges of the Tribunals are not pre-funded. Retirees and beneficiaries are paid from the assessed biennial budget of each organ on a pay-as-you-go basis. The current liability for the projected benefits by organ, including current retirees and beneficiaries (a total of 61 individuals), is set out in table 2 of the Secretary-General's report and reproduced as table 1 below:

Table 1
Current liability for projected benefits
(As at 31 December 2010)

	International Court of Justice	*International Tribunal for the Former Yugoslavia*	*International Criminal Tribunal for Rwanda*
Active judges	17 043 698	13 196 783	10 279 979
Prospective judges[a]	29 835 105	—	—
Retired judges/beneficiaries	18 433 397	9 808 982	7 988 451
Total liability	**65 312 200**	**23 005 765**	**18 268 430**

[a] Includes new judges projected to be appointed over the next 30 years.

IV. Comprehensive review

Methodology

7. With regard to the conduct of the comprehensive review, the Advisory Committee notes from paragraphs 22 to 24 of the Secretary-General's report that, in accordance with the request of the General Assembly contained in paragraphs 4 and 5 of its resolution 65/258, the Secretary-General has taken advantage of the expertise available within the United Nations in conducting the comprehensive review of the pension schemes. A working group, comprising representatives of the United Nations Joint Staff Pension Fund, the Office of Human Resources Management, the Court and the Tribunals, was established in order to conduct a thorough study of retirement plan alternatives. The Office of Programme Planning, Budget and Accounts was also consulted for its financial expertise. In the absence of internal staff resources to conduct the required actuarial study, the actuaries of the Pension Fund, Buck Consultants, Inc., were engaged for that purpose. Upon enquiry, the Committee was informed that the actuarial fees had amounted to $60,000. Information on the methodology used to conduct the comprehensive review is contained in paragraphs 32 and 33 of the Secretary-General's report.

Findings: pension benefit design options

8. In his report, the Secretary-General presents four retirement benefit design options. The characteristics of each option are summarized in paragraphs 9 to 12 below.

9. The first option described by the Secretary-General — option A — is a defined-benefit scheme, which would provide a specified periodic benefit on retirement, guaranteed for the life of the participant, predetermined by a formula based on the employee's earnings history, length of service and age, rather than

depending on investment returns. The most common type of formula — referred to as the "replacement ratio" — is based on the employee's terminal earnings. As indicated in paragraph 5 above, table 3 of the Secretary-General's report compares replacement ratios for judges of various supreme and international courts who retire after nine years' service. The Secretary-General notes, in particular, that the benefit for members of the Court and judges of the Tribunals is above average, at 50 per cent of final salary. Table 4 of the report compares the current pension accrual rate for the members of the Court and the judges of the Tribunals — 5.56 per cent for the first nine years, then 1.85 per cent thereafter — with the rates applicable to judges of various supreme and international courts (A/66/617, paras. 34-41).

10. The second option discussed by the Secretary-General — option B — is a defined-contribution scheme, which would provide an account balance, with interest accruing both before and after retirement, based on the actual earnings of underlying investments. The amount of benefit expected to be provided by this specific scheme is directly related not only to the amount of contribution made, but also to the length of time the money is invested. The effects of compound interest will have a significant growth effect only over a long period of time. Table 5 of the Secretary-General's report shows some sample fixed contribution rates and annual equivalent accrual rates that can be expected based on a defined-contribution scheme and various assumed investment returns (ibid., paras. 42-48).

11. The Secretary-General's third option — option C — consists of a lump-sum payment made from payroll to a retiring judge in lieu of any pension benefits. In order to determine the appropriate lump-sum amount, either a cash balance design or a pension equity design could be applied (ibid., paras. 49-52).

12. Lastly, the Secretary-General's fourth option — option D — is the maintenance of the status quo, i.e. retaining the current pension benefit scheme as described in paragraph 4 above (ibid., paras. 53-55).

13. In his report, the Secretary-General alludes to the possible disadvantages of some of the retirement benefit design options. He points out that, unlike the current pension scheme which is not pre-funded, option B, the defined-contribution scheme, requires advance funding. He also states that additional administrative provisions would be required to manage a defined-contribution scheme. With regard to option C, the lump-sum payment, it is indicated in paragraph 52 of the report that its adoption would amount to the abolition of the current pension in return for a payment. This approach would, according to the Secretary-General, seem difficult to reconcile with Article 32, paragraph 7, of the Statute of the Court, and, by extension, articles 13 bis and 12 bis of the statutes of the two Tribunals, which confer on members of the Court and judges of the Tribunals a right to a pension. The Advisory Committee also takes note of the views expressed in paragraphs 54 and 59 of the Secretary-General's report.

14. Following its consideration of the Secretary-General's report, the Advisory Committee was provided, for information, with an advance copy of a paper by the International Court of Justice containing detailed comments and observations of the members of the Court on the issues raised by the Secretary-General. The Committee was informed that it was the intention of the Court to have the paper circulated to the President and members of the General Assembly.

Secretary-General's recommendation

15. Section VI of the Secretary-General's report contains his recommendation concerning the pension scheme for the members of the Court and the judges of the Tribunals. In his view, based on the actuarial findings and bearing in mind the relative disadvantages of some of the other options (see para. 13 above, as well as A/66/617, para. 57), the defined-benefit scheme — option A — may be an appropriate way forward. The Secretary-General indicates in paragraph 58 of his report that the most favoured application of this option would be to change the current two-tiered system of accumulation (see para. 4 above) to a linear system of accumulation of 3.7 per cent per year for 18 years and nothing thereafter. This would reduce the front load, since members of the Court and judges of the Tribunals would receive a lower pension amount for the first nine years of their service, and reduce the overall liability of Member States. According to the Secretary-General, it might also encourage longer periods of service, thereby reducing the benefit payout term, assuming that the average age of recruitment remains 58 years. Upon enquiry, the Advisory Committee was informed that, should the General Assembly endorse the Secretary-General's recommendation, new members of the Court who retired after having attained the retirement age of 60 years and after having served one nine-year term would receive a pension of $56,637 per year, assuming that their net base salary on retirement would be $170,080.

16. The Advisory Committee notes from paragraph 60 of the Secretary-General's report that it is suggested that any new pension scheme should apply only to newly elected members of the Court, given that Article 32, paragraph 5, of the Statute provides that the salaries, allowances and compensation of the members of the Court shall be fixed by the General Assembly and may not be decreased during their term of office. The Committee notes that, while this provision applies equally to the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda by virtue of articles 13 bis and 12 bis, respectively, of their statutes, with the impending completion of the Tribunals' mandates it is highly unlikely that any new permanent judges will be elected and become eligible for pension benefits by serving for more than three years (A/66/617, para. 18).

17. In paragraph 18 of his report, however, the Secretary-General raises the issue of the applicability of the pension scheme to the judges of the International Residual Mechanism for Criminal Tribunals. He indicates, in particular, that the Presidency of the Residual Mechanism is likely to be "double hatted" with the Presidency of one of the two Tribunals and that, accordingly, if the current pension scheme is revised two different sets of regulations could apply to the same judge in his or her capacity as President of the Residual Mechanism and President of one of the Tribunals. For that and other reasons enumerated in paragraph 18 of his report, the Secretary-General states that it may be more efficient to exclude the Residual Mechanism and the Tribunals in their entirety from the revised pension scheme. In this connection, the Advisory Committee recalls that, in accordance with article 8, paragraph 4, of the statute of the Residual Mechanism, the terms and conditions of service of the President of the Mechanism shall be those of the judges of the International Court of Justice. Upon enquiry, the Committee was informed that if the new President of the Residual Mechanism were to be elected from among the existing permanent judges of the Tribunals and were to be permitted to maintain his or her existing contractual relationship with the United Nations, his or her original conditions of service would continue to apply. This would mean that, pursuant to

Article 32, paragraph 5, of the Statute of the Court, any changes to the pension scheme that would lead to a decrease in pension benefits would not apply.

18. Should the General Assembly endorse the recommendation described in paragraph 15 above, the estimated liability for new judges projected to assume office over the next 30 years would be reduced by $9,964,925, from $29,835,105 to $19,870,180. In addition, changing to a linear system of accumulation would reduce the actuarial cost of funding the pension entitlement over a 10-year period from its current level of about 66 per cent of the judges' base pay to about 44 per cent (A/66/617, para. 58). Upon enquiry, the Advisory Committee was informed that, in dollar terms, the actuarial cost per participant would be reduced from $112,253 to $74,834, resulting in savings of $37,419 per year per participant. The Committee was provided, upon request, with the following table illustrating the liability for the projected benefits by organ, including current retirees and beneficiaries, assuming that the linear approach recommended by the Secretary-General is applied as he suggests, i.e. only to new judges:

Table 2
Liability for projected benefits assuming that option A is applied only to new judges
(As at 31 December 2010)

	International Court of Justice	*International Tribunal for the Former Yugoslavia*	*International Criminal Tribunal for Rwanda*
Active judges	17 043 698	13 196 783	10 279 979
Prospective judges[a]	19 870 180		
Retired judges/beneficiaries	18 433 397	9 808 982	7 988 451
Total liability	**55 347 275**	**23 005 765**	**18 268 430**
Reduction in liability as compared with current scheme	**9 964 925**	—	—

[a] Includes new judges projected to be appointed over the next 30 years.

Alternative scenarios and additional comparators

19. Upon request, the Advisory Committee was also provided with the following table illustrating the liability for the projected benefits by organ, including current retirees and beneficiaries, if the linear approach recommended by the Secretary-General were to be applied both to new judges and to current active judges:

Table 3
Liability for projected benefits assuming that option A is applied to both new judges and current judges
(As at 31 December 2010)

	International Court of Justice	*International Tribunal for the Former Yugoslavia*	*International Criminal Tribunal for Rwanda*
Active judges	14 977 701	12 505 128	9 760 275
Prospective judges[a]	19 870 180	—	—
Retired judges/beneficiaries	18 433 397	9 808 982	7 988 451
Total liability	**53 281 278**	**22 314 110**	**17 748 726**
Reduction in liability as compared with current scheme	**12 030 922**	**691 655**	**519 704**

[a] Includes new judges projected to be appointed over the next 30 years.

20. During its consideration of the Secretary-General's report, the Advisory Committee enquired as to whether increasing the retirement age for members of the Court and judges of the Tribunals from 60 to 65 years would lower the projected liability. In response, the Committee was informed that, over the past 20 years, no judges had retired before the age of 60 and only four judges had retired before the age of 65. Consequently, any actuarial savings associated with introducing early retirement deductions for individuals retiring before the age of 65 would be relatively small.

21. For the purposes of comparison, the Advisory Committee also requested information on the retirement benefits payable to various Secretariat and non-Secretariat officials, including Under-Secretaries-General, Assistant Secretaries-General, the Chair and Vice-Chair of the International Civil Service Commission (ICSC), the Chair of the Advisory Committee and members of the Joint Inspection Unit. The Committee was informed that all the aforementioned officials were participants in the United Nations Joint Staff Pension Fund, which had been designed to establish certain levels of replacement ratios for specific years of service for career employees in both the General Service and Professional categories. Pursuant to the Regulations and Rules of the Fund, participants contributed 7.9 per cent of their pensionable remuneration, while the Organization contributed 15.8 per cent.

22. Upon request, the Advisory Committee was provided with the following table, which gives an indication of the pension benefit amounts that the above-mentioned officials might expect to receive after nine years' contributory service:

Table 4
Benefit amounts for Secretariat and non-Secretariat officials after nine years' contributory service

Category of official	*Annual benefit amount (in United States dollars)*
Under-Secretary-General	42 880
Assistant Secretary-General	39 633
Chair/Vice-Chair of ICSC, Chair of the Advisory Committee	40 548
Member of the Joint Inspection Unit	35 202

The Committee was informed, upon enquiry, that if prospective new members of the Court were granted an accumulation rate similar to that of Under-Secretaries-General and Assistant Secretaries-General, namely 14.5 per cent after nine years' service, the projected benefit liability for new judges over the next 30 years would amount to $8,402,998, a reduction of $21,432,107 as compared with the projected liability of $29,835,105 under the current scheme.

23. With regard to the contributory nature of the pension scheme referred to in the preceding paragraph, the Advisory Committee recalls that, as indicated in paragraph 57 of the Secretary-General's report, the General Assembly has repeatedly affirmed that the conditions of service and compensation for non-Secretariat officials of the United Nations shall be separate and distinct from those for officials of the Secretariat. Furthermore, as indicated in paragraph 47 of the report, the non-contributory nature of the pension scheme for the members of the Court and the judges of the Tribunals is a principle of long standing, which was already firmly established at the time of the League of Nations and has consistently been reaffirmed by the Assembly.

24. The Advisory Committee was also provided, upon request, with the following information on the retirement benefits currently payable to the judges of the International Criminal Court:

		Early retirement			*Ancillary benefits*		
Benefit formula	*Normal retirement age*	*Age*	*Reduction*	*Participant contribution*	*Disability*	*Survivor*	*Children*
12.5 per cent of annual net base salary of $237,170, amounting to $29,645, prorated for terms of service of less than nine years. No additional pension benefits for service beyond a first nine-year term	60 (three years vested)	As at the time of separation	Actuarially reduced	No	Yes	Yes	Yes

The Committee was informed that the pension scheme for the judges of the International Criminal Court had been modified in 2007. Prior to that date, retirees had received an annual benefit equivalent to 50 per cent of their annual net base salary of $237,170, which amounted to $118,585. That amount was prorated to account for terms of office of less than nine years. The Committee was further informed that, in order to avoid any breach of the Statute of the Court, the Assembly

of States Parties had decided that the new pension scheme would apply only to new judges, with the previous scheme continuing to apply to serving judges and retirees.

Acquired pension benefit rights

25. The Advisory Committee recalls that, in paragraph 5 of its resolution 65/258, the General Assembly specifically requested the Secretary-General, when proposing a mechanism to determine retirement pension benefits for the members of the International Court of Justice and the judges of the two Tribunals, to take account of acquired pension benefit rights accrued prior to serving in the Court or the Tribunals. The Secretary-General addresses this issue in paragraphs 36 to 40 of his report, indicating, inter alia, that because of the variety in type and level of benefits provided by former employers and by social insurance programmes, achieving a uniform replacement ratio by adjusting accrual rates is difficult. He states that the actual replacement ratio for an individual judge will ultimately depend on the level of pension accrual during any prior employment periods and the applicable social insurance benefits, and asserts that a pension scheme that was designed to take into consideration the prior employment of the members of the Court might face legal and practical difficulties in its implementation.

26. Upon enquiry, the Advisory Committee was informed that those legal and practical difficulties related to privacy issues — it might not be appropriate to ask current members of the Court if and how they had invested their money in the past in order to build up prior pension rights, and it would be impossible to gather such information in respect of prospective judges — and to the challenges associated with obtaining information on benefits payable to individuals under their respective national pension schemes. The Committee was also informed that a pension scheme that took account of prior pension benefits accrued by members of the Court when determining their rights to a pension from the Court might be a complex matter requiring additional administration.

27. It was explained to the Advisory Committee, upon enquiry, that the current pension scheme for the members of the Court and the judges of the Tribunals incorporated such a rapid accumulation of benefits over the first nine years of service (5.56 per cent per year) because, to date, membership of the Court, and by extension of the Tribunals, had been treated as an autonomous and new career. Indeed, the Committee notes from paragraph 40 of the Secretary-General's report that, in 1995, it was the considered view of the then Secretary-General that the prior employment of the members of the Court should not be taken into consideration in establishing the level of income replacement for their pensions (see A/C.5/50/18, paras. 25-28 and annex).

28. The Advisory Committee was further informed, however, that in order to respond to the request of the General Assembly contained in its resolution 65/258, the defined-benefit pension scheme recommended by the Secretary-General — option A — did take into consideration the possibility that members of the Court and judges of the Tribunals had had previous careers and had acquired pension benefit rights. Accordingly, in paragraph 36 of the Secretary-General's report, it was suggested that pension benefits should be determined on the basis of the assumption that the members of the Court and the judges of the Tribunals had served a full 35-year career. In order to ensure an 80 per cent final salary replacement ratio target, an annual accrual rate of between 1.86 and 1.71 per cent would be required.

The Committee was informed that, under those circumstances, the current accrual rate for judges of 5.56 per cent during the first nine years might be deemed excessive. In paragraph 37 of his report, the Secretary-General also suggested that some accommodation in accrual rate could be envisaged to account for the loss in benefits that judges might experience by leaving prior employment before the highest career salary levels could be reflected in their pension benefits. In that case, according to the Secretary-General, an accrual rate of between 2.42 and 2.22 per cent would be appropriate in order to meet the overall targeted replacement ratio of 80 per cent for a 35-year career. It was pointed out to the Committee, in that connection, that the Secretary-General's recommended option was more generous than the mechanism set out in paragraphs 36 and 37 of his report, since it incorporated a linear accumulation rate of 3.7 per cent per year for 18 years.

V. Conclusion and recommendations

29. **Having considered the Secretary-General's report, as well as the additional information provided to it, the Advisory Committee recommends that the General Assembly endorse the Secretary-General's recommendation for a defined-benefit pension scheme — option A — with a linear system of accumulation of 3.7 per cent per year for 18 years and nothing thereafter. In the Committee's view, a change to the status quo is justified because option A does, to a certain extent, take account of acquired pension rights. The Committee also favours option A because it maintains the long-standing non-contributory nature of the pension scheme. Since, in accordance with Article 32, paragraph 5, of the Statute of the Court and articles 13 bis and 12 bis of the statutes of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, respectively, the salaries, allowances and compensation of the members of the Court and the judges of the Tribunals may not be decreased during their term of office, the Committee agrees with the Secretary-General that the new arrangements should apply only to new members of the Court and judges of the Tribunals, if any.**

30. **As indicated in the preceding paragraph, the Secretary-General's recommended pension scheme does, to a certain extent, take account of acquired pension benefit rights accrued prior to service with the Court or the Tribunals when determining the level of retirement benefits. In the Advisory Committee's view, this approach is not unreasonable, particularly since the previous careers of the individuals concerned are a key factor in determining their competence to serve. The Committee considers that this question should have been addressed in more detail in the Secretary-General's report. The General Assembly may therefore wish to request the Secretary-General to give further consideration to this issue and to report back to it at its sixty-eighth session in the context of the next comprehensive review.**